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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,379	03/31/2004	Ronna Stockard	57296	5504

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Dennis H. Lambert & Associates
7000 View Park Drive
Burke, VA 22015

EXAMINER

VANATTA, AMY B

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 06/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/814,379

Applicant(s)

STOCKARD, RONNA

Examiner

Amy B. Vanatta

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>033104</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4, and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Krich et al (US 4,469,259).

Krich et al disclose a garment forming an apron as claimed, including a piece of material (panel 11) having a top end, a bottom end, and opposite side edges (see Figs. 1 and 2). The side edges are adapted to wrap partially around the side of the wearer as claimed. The garment has securing means on the bottom end (14) which forms a pouch for supporting an infant as claimed. The securing means comprise an elongate strip of material (14) attached to the bottom end of the apron (11), the material having opposite ends which extend beyond the side edges of the apron (see Fig. 1) and are adapted to wrap around the wearer's midsection as claimed and be tied together via a "D" ring or "O" ring (see "20" and col. 5, lines 14-20). Krich discloses that the garment may be used for nursing (col. 2, lines 24-26). Krich discloses a neck strap 12 which is adapted to extend around the neck to support the apron and infant as claimed (e.g. the neck strap 12L extends around the left side of the neck and around the rear of the neck, crosses over the other neck strap and attaches to ring 18R; col. 4, lines 7-8). The neck

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strap is adjustable by means of ring 18R or 17L, as in claim 5. Krich teaches that padding is provided on the neck strap (col. 4, lines 26-27), forming a "neck pad" as claimed in claim 5.

3. Claims 1-4, 6, and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by De Lasarte (US 2,124,366).

De Lasarte discloses a garment forming an apron as claimed, including a blouse or waist portion 10 which forms the claimed "piece of material" having a top end (at neck edge), a bottom end (at waist, the bottom end being attached to skirt 11; page 1, col. 2, lines 1-5 and Fig. 3), and opposite side edges (17,18). The side edges are adapted to wrap partially around the side of the wearer as claimed. The garment has securing means on the bottom end (12,13,14) which forms a pouch as claimed. The securing means comprise an elongate strip of material (see 12,13,14) attached to the bottom end of the apron (10), the material having opposite ends (13,14) which extend beyond the side edges of the apron and are adapted to wrap around the wearer's midsection and be tied as claimed. De Lasarte discloses that the garment may be used for nursing (page 1, col. 1, lines 8-14). De Lasarte does not disclose the use of the securing means for supporting a nursing infant, however the recitation of the intended use of the garment does not further define the invention over De Lasarte, since De Lasarte shows the claimed structure and is capable of being used in such a manner. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to

be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

De Lasarte discloses a neck strap (20,21) which wraps around the neck as claimed. Regarding claims 3, 6, and 8, the opposite side edges of the apron are positioned as claimed, and privacy flaps (right and left sides of cape 36; see Fig. 1) are provided on the opposite side edges of the apron. The flaps are capable of functioning as claimed, to cover or uncover the head of a nursing infant.

4. Claims 1-3, 8, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Swanke (US Des. 425,696).

Swanke discloses a garment forming an apron as claimed, including a piece of material having a top end, a bottom end (at waist), and opposite side edges (see Fig. 2). The side edges are adapted to wrap partially around the side of the wearer as claimed. The garment has securing means on the bottom end (see waist strap shown in Figs. 1) which forms a pouch for supporting an infant as claimed. Swanke shows a neck strap (Figs. 1 and 2) which extends around the neck as claimed. Regarding claims 3 and 8, the opposite side edges of the apron have outwardly extending triangular portions at the upper region thereof (see Fig. 2, showing outwardly extending triangular portions at the upper corners of the piece of material, in the general area where the neck strap is attached to the material). These portions form flaps as claimed, which may be used as "privacy flaps" to the extent claimed. That is, the outwardly extending triangular flaps ("privacy flaps") are capable of functioning as claimed. Swanke does not disclose the

use of the device for supporting an infant while nursing, however the recitation of the intended use of the garment does not further define the invention over Swanke, since Swanke shows the claimed structure and is capable of being used in such a manner. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

5. Claims 1-4, 6, and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Morganti (US 2,567,524).

Morganti discloses an apron as claimed, including a piece of material (10) having a top end (at neck edge), a bottom end (at waist), and opposite side edges (see Fig. 1). The side edges are adapted to wrap partially around the side of the wearer as claimed. The garment has securing means on the bottom end (16) which may be used to form a pouch as claimed. The securing means 16 comprise an elongate strip of material (see Fig. 1) attached to the bottom end of the apron, the material having opposite ends which extend beyond the side edges of the apron and are adapted to wrap around the wearer's midsection and be tied as claimed. Although Morganti does not disclose that the garment may be used for nursing and does not disclose the use of the securing means for supporting a nursing infant, such a recitation of the intended use of the garment does not further define the invention over Morganti, since Morganti shows the claimed structure and is capable of being used in such a manner. It has been held that

a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Morganti discloses a neck strap (14) which wraps around the neck as claimed. Regarding claims 3, 6, and 8, the opposite side edges of the apron are positioned as claimed, and privacy flaps (outwardly extending points 15) are provided on the opposite side edges of the apron. The flaps are capable of functioning as claimed.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 4-7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swanke (US Des. 425,696) in view of Napolitano (US 4,579,264).

Swanke discloses a garment forming an apron as claimed, including a neck strap (see Figs. 1 and 2) which extends around the neck as claimed. The neck strap is shown as having adjustment means as claimed (see Fig. 3, showing buckle on the left which allows for adjustment of the neck strap). The neck strap is not disclosed as having a neck pad, as in claims 5 and 7. Napolitano discloses an infant supporting device which has support straps 15, 20. It is disclosed that padding is provided on the strap (col. 4, lines 6-9). Neck straps and shoulder straps are commonly provided with

padding in order to provide greater comfort to the wearer. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide padding on the neck strap of Swanke, such as disclosed by Napolitano, in order to provide greater comfort for the wearer.

Swanke discloses securing means on the bottom end (see waist strap shown in Figs. 1) which forms a pouch for supporting an infant as claimed. The securing means comprises an elongate strip of material attached to the bottom end of the apron, having opposite ends extending beyond the side edges of the apron and adapted to wrap around the midsection of the wearer, as in claims 4 and 10. The strap is shown as fastened by means of a clip, however, rather than being tied (see Fig. 1). Napolitano discloses an infant supporting device which has a waist strap 36 attached to the bottom end and having opposite ends extending beyond the side edges of the apron. The strap is tied around the waist (see col. 4, lines 15-17). Tying is a conventional means of fastening straps in the art, and is advantageous since it saves production costs due to less material (no fastener needed) and less time to manufacture. It would have been obvious to one having ordinary skill in the art at the time the invention was made to fasten the waist strap of Swanke by tying such as disclosed by Napolitano, rather than by a clip, in order to save production costs.

Regarding claim 6, which depends from claim 4, as noted in the rejection above, the opposite side edges of the apron have outwardly extending triangular portions at the upper region thereof (see Fig. 2, showing outwardly extending triangular portions at the upper corners of the piece of material, in the general area where the neck strap is

attached to the material). These portions form flaps as claimed, which may be used as "privacy flaps" to the extent claimed.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy B. Vanatta whose telephone number is 571-272-4995. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 571-272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Amy B Vanatta
Primary Examiner
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